

**REMARKS**

This application has been carefully reviewed in light of the final Office Action mailed October 16, 2001. Applicant appreciates the Examiner's consideration of the application. To advance prosecution of this application, Applicant has responded to each issue raised by the Examiner. Since Applicant believes that the claims are allowable in their present form, for at least the reasons discussed below, Applicant has not amended the claims. For the convenience of the Examiner, all pending claims are reproduced in the attached Appendix. Applicant respectfully requests reconsideration, further examination, and favorable action in this case.

The Examiner rejects Claims 1-37 under 35 U.S.C. § 103(a) as being unpatentable over European Patent Application EP0770967A2 by Schmidt et al. ("*Schmidt*") in view of John Downes & Elliot Goodman, Dictionary of Finance and Investment Terms ("*Dictionary*"). Applicant respectfully traverses these rejections for reasons discussed below.

**Independent Claims**

The Examiner asserts in support of the rejections that several portions of *Schmidt* disclose allowing customers and vendors to "enter into electronic contracts with one another." (*Final Office Action, Page 15, Last paragraph*). Applicant respectfully traverses these assertions.

The Examiner relies on the "component procurement policy development module" of *Schmidt*. (*Page 1, Left column, Lines 20-21*). The component procurement policy development module disclosed in *Schmidt* determines which procurement policy to use when supplying a component to a customer. (*Page 28, Lines 9-14*). Possible policies include "Just in Time" and "Bulk purchase" policies. (*Page 88, Lines 49-50*). *Schmidt* lacks any disclosure, teaching, or suggestion that the selected policy is communicated between a buyer and a seller, that the buyer accepts the policy identified by the seller, or that the seller accepts the policy identified by the buyer. Thus, *Schmidt* necessarily lacks at a minimum any disclosure, teaching, or suggestion of:

- communicating from the buyer computer to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including an option corresponding to the range of forecasted demand;

- updating at the buyer computer the forecasted demand; and
- exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand.

The Examiner also relies on various “data spaces” used in the system of *Schmidt*. (Figures 15 and 22; Page 7, Line 56 - Page 8, Line 3). Applicant respectfully notes that the “data spaces” used by *Schmidt* merely store information identifying the predicted customer demand for a product over time, (Page 7, Lines 56-58), the predicted production of a product over time, (Page 7, Line 59 - Page 8, Line 3), and the predicted amount of a product in inventory over time. (Page 8, Lines 4-7). At a minimum, none of this disclosure involves:

- communicating from the buyer computer to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including an option corresponding to the range of forecasted demand;
- updating at the buyer computer the forecasted demand; and
- exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand.

The Examiner also relies on the Production-Sales-Inventory (PSI) functionality of *Schmidt*. (Page 26, Lines 23-45). The PSI functionality of *Schmidt* “ensures consistency among the production, sales and inventory plans and helps determine a feasible and appropriate PSI plan.” (Page 26, Lines 10-11). At a minimum, *Schmidt* does not disclose, teach, or suggest that the development of the production, sales, inventory, or PSI plans involves:

- communicating from the buyer computer to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including an option corresponding to the range of forecasted demand;
- updating at the buyer computer the forecasted demand; and
- exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand.

The Examiner also relies on the Vendor Managed Replenishment (VMR) Frame of

*Schmidt*. (Figure 23). The VMR frame takes data such as point of sale information from a customer and determines how to replenish the customer's supply of a product. (Page 28, Line 54 - Page 29, Line 2). The VMR frame at a minimum does not allow:

- communicating from the buyer computer to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including an option corresponding to the range of forecasted demand;
- updating at the buyer computer the forecasted demand; and
- exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand.

The Examiner also asserts that the paragraphs entitled "VMR Contract Setup" and "Contract Parameter Monitoring and VMR Program Review" disclose "receiving terms of an option contract and communicating an acceptance of the terms." (*Final Office Action*, Page 16, Last paragraph). However, Applicant respectfully notes that this contradicts the Examiner's statements in the Final Office Action that *Schmidt* fails to disclose, teach, or suggest receiving the terms of an option contract and communicating an acceptance of the terms. (*Final Office Action*, Page 3, Third paragraph; Page 8, Fifth paragraph). Applicant also respectfully notes that this contradicts the Examiner's previous acknowledgement that U.S. Patent No. 5,953,707, which contains substantially the same disclosure as *Schmidt*, fails to disclose the use of option contracts. (*July 6, 2000 Office Action*, Page 3, Second paragraph).

In addition, the proposed combination of *Schmidt* and *Dictionary* fails to disclose, teach, or suggest all elements of the independent claims. For example, regarding Claim independent 1, the Examiner acknowledges that *Schmidt* fails to disclose "communicating from the buyer computer to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including an option corresponding to the range of forecasted demand; executing the option contract; updating at the buyer computer the forecasted demand; and exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand." (*Final Office Action*, Page 3, Third paragraph). *Dictionary* merely recites general definitions for the terms "option" and "exercise." Thus, even the proposed

*Schmidt-Dictionary* combination at a minimum fails to disclose, teach, or suggest in any manner whatsoever:

- communicating from the buyer computer to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including an option corresponding to the range of forecasted demand;
- updating at the buyer computer the forecasted demand; and
- exercising the option in the option contract within the range of forecasted demand based on the updated forecasted demand.

Independent Claim 19 recites several similar limitations as Claim 1. Thus, at a minimum, the proposed *Schmidt-Dictionary* combination also fails to disclose, teach, or suggest:

- a negotiation module operable to communicate to a seller computer an offer to enter into an option contract for the supply of a product, the option contract including a proposed option corresponding to the range of forecasted demand, the negotiation module further operable to receive from the seller computer a modified range of forecasted demand, to communicate the modified range of forecasted demand to the forecast module, and to receive from the forecast module a compromised range of forecasted demand;
- an execution module operable to execute an option contract including an option corresponding to the compromised range of forecasted demand; and
- an exercise module operable to receive from the forecast module an updated forecasted demand within the compromised range of forecasted demand and to communicate to the seller computer a request to exercise the option with the updated forecasted demand.

The Examiner also acknowledges that *Schmidt* fails to disclose “receiving at a seller computer terms of an option contract from a buyer computer, the terms comprising an option corresponding to a buyer’s range of forecasted demand for a product; communicating to the buyer computer an acceptance of the terms of the option contract; storing the terms of the accepted option contract in a memory accessible to the seller computer; receiving from the buyer computer a request to exercise the option with the buyer’s updated forecasted demand for the product; and enforcing the terms of the option contract at the seller computer without user input.” (*Final*

*Office Action, Page 8, Fourth paragraph - Page 9, First paragraph*). Applicant notes that the Examiner is acknowledging that *Schmidt* fails to disclose every element of independent Claim 12. Applicant again notes that *Dictionary* merely recites general definitions for the terms "option" and "exercise." Thus, at a minimum, even the proposed *Schmidt-Dictionary* combination fails to disclose, teach, or suggest in any manner whatsoever:

- receiving at a seller computer terms of an option contract from a buyer computer, the terms comprising an option corresponding to a buyer's range of forecasted demand for a product; and
- receiving from the buyer computer a request to exercise the option with the buyer's updated forecasted demand for the product.

Independent Claim 28 recites several similar limitations as Claims 1 and 12. Thus, at a minimum, the proposed *Schmidt-Dictionary* combination similarly fails to disclose, teach, or suggest:

- a negotiation module operable to receive from a buyer computer an offer to enter into an option contract for the supply of a product, the option contract including a proposed option corresponding to a range of forecasted demand;
- an execution module operable to execute the option contract and to store the terms of the option contract in a memory accessible to the seller computer; and
- a tracking module operable to receive a request from the buyer computer to exercise the option, to access the memory to determine the terms of the option contract, and to determine whether to grant the request to exercise the option.

In addition, in making an obviousness rejection, it is critical to cast "the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field." *In re Kotzab*, 217 F.3d 1365, 1369 (Fed. Cir. 2000) (emphasis added). The Examiner has not shown that the claims would have been obvious to one skilled in the art at the time of the invention under the strict constraints for obviousness determinations set forth in the M.P.E.P. and governing Federal Circuit case law. In particular, the Examiner rejects Applicant's claims when most or all of the claim limitations

are not disclosed in either of the cited references. The Examiner has simply not provided the required showing that the claimed invention would be obvious to one skilled in the art when guided only by the cited references and the then-accepted wisdom in the field.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 1, 12, 19, and 28, and their dependent claims.

### **Dependent Claims**

Dependent Claims 2-11, 13-18, 20-27, and 29-37 depend on Claims 1, 12, 19, and 28, respectively. As described above, Claims 1, 12, 19, and 28 are allowable over the proposed *Schmidt-Dictionary* combination. Claims 2-11, 13-18, 20-27, and 29-37 are allowable due to their dependence on these allowable claims, and further based on their own recitations.

For example, Claim 5 recites that exercising an option includes “specifying a first quantity of product desired at a first time during the exercise period” and “specifying a second quantity of product desired at a second time during the exercise period.” Claim 5 also recites that “the updated forecasted demand comprises the sum of the first and second quantities of product desired.” The portion of *Schmidt* cited by the Examiner (*Page 12, Lines 15-18*) fails to disclose, teach, or suggest a system that may exercise an option by specifying multiple quantities of a product, where the sum of the quantities equal “the updated forecasted demand.” This portion of *Schmidt* merely describes how the system inputs a forecast to an enterprise’s system and then fills purchase orders when they arrive. As a result, *Schmidt* fails to disclose, teach, or suggest Claim 5.

In addition, Claims 6 and 11 recite receiving from the seller computer a “modified” range of forecasted demand, where the “range of forecasted demand [is] modified by an optimization model at the seller computer.” Claim 6 also recites “accepting the modified range of forecasted demand as a term to the option contract.” Claim 11 recites “determining a modified proposed option price based on the modified proposed range of forecasted demand” and “communicating the modified proposed option price to the seller computer.” The portion of *Schmidt* cited by the

Examiner (*Page 12, Lines 18-22*) fails to disclose, teach, or suggest a system that may receive a “modified” range of forecasted demand generated by an “optimization model” and accepting the modified range as a term of a contract or modifying an option price. This portion of *Schmidt* merely describes how the system may compare point of sale information to a sales forecast, generate customer-specific forecasts, and analyze the effect of promotions on product demand. As a result, *Schmidt* fails to disclose, teach, or suggest Claims 6 and 11.

As yet another example, Claims 8, 23, and 34 recite determining that a “proposed contract term is within the range of acceptable contract terms” and accepting the proposed contract term “without user input.” None of the portions of *Schmidt* cited by the Examiner disclose, teach, or suggest a system that may automatically accept a proposed contract term “without user input.” One portion of *Schmidt* cited by the Examiner (*Page 23, Lines 1-45*) merely describes how the system of *Schmidt* determines a forecast for a product, which does not involve the automatic acceptance of a proposed contract term. Another portion of *Schmidt* cited by the Examiner (*Page 28, Line 50 - Page 29, Line 21*) refers to the VMR contract arrangement described above, which does not include accepting a proposed contract term “without user input.” Nothing in the cited portions relate to determining whether a “proposed contract term” falls within a “range of acceptable contract terms” and accepting the proposed contract term “without user input.” As a result, *Schmidt* fails to disclose, teach, or suggest Claims 8, 23, and 34.

As another example, Claims 9, 24, and 35 recite determining that a “proposed contract term is not within the range of acceptable contract terms” and identifying the proposed contract term as “a term requiring user input prior to acceptance.” None of the portions of *Schmidt* cited by the Examiner disclose, teach, or suggest a system that may automatically determine that a proposed term is not within a range of acceptable terms and identify the proposed term as “requiring user input prior to acceptance.” One portion of *Schmidt* cited by the Examiner (*Page 23, Line 46 - Page 24, Line 20*) describes how a user may select a product group and an inventory policy that are used by the system to perform inventory planning. Another portion of *Schmidt* cited by the Examiner (*Page 29, Line 29 - Page 30, Line 7*) describes information used by the system to perform replenishment operations. Nothing in the cited portions relate to determining

whether a “proposed contract term” falls within a “range of acceptable contract terms” and identifying the proposed term as “requiring user input prior to acceptance.” As a result, *Schmidt* fails to disclose, teach, or suggest Claims 9, 24, and 35.



**CONCLUSION**

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case, the Examiner is invited to call the undersigned attorney for Applicant, Christopher W. Kennerly, at the convenience of the Examiner. Mr. Kennerly may be reached at 214-953-6812.

Applicant does not believe that any fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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